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**CITY OF WELLAND INTEGRITY COMMISSIONER, H.G. ELSTON**

Citation: Anonymous v. Councillor DiMarco  
Date: November 3, 2020

**REPORT ON THE MATTER OF A COMPLAINT AGAINST COUNCILLOR DIMARCO  
BY ANONYMOUS**

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Notice: Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. Reference should be made to the minutes of the municipal council meeting where the Commissioner's report was presented, to obtain information about council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

[Link to Council Decision]

## INTRODUCTION

1. This is a report on the wrongful public disclosure by City of Welland Councillor Tony DiMarco that a harassment complaint had been made against a member or members of the City's senior management team. The circumstances and aftermath of the alleged breach are of some consequence and invoke not only the Code of Conduct's prohibition against the disclosure of confidential information, but also its provisions identifying what is considered to be discreditable conduct and the inappropriate treatment of staff.

2. During the open session of Council's meeting of September 1, 2020, Councillor DiMarco provided an update on the work of the City's Human Resources Committee ("HRC"), which included confidential information regarding a harassment complaint that was filed against a member or members of the City's Corporate Leadership Team ("CLT"). The information released by Councillor DiMarco had been provided to the members of the HRC in an earlier closed session meeting and Councillor DiMarco and his colleagues on the HRC were advised that the matter was to remain confidential. The Complainant feels that the disclosure was all the more egregious and clearly deliberate, given the caution that had been provided to the members of the HRC.

3. When provided with notice of the complaint, Councillor DiMarco noted that he is Chair of the HRT and that, typically, following a HRC meeting, a report is made to Council. Councillor DiMarco pleads that no confidential information was disclosed and that he merely referenced items that were on the HRC agenda, including an update on "recent harassment allegations against the CMT". He notes that at the September 1<sup>st</sup> meeting when he asked for a waiving of the rules to make his report, he was not warned against it. Councillor DiMarco told me that, if anything was done inappropriately, he apologizes.

## THE CODE

4. As information that was provided to Councillor DiMarco in confidence, as an internal communication, which, if disclosed may prejudice the reputation of City employees, as well as information concerning litigation, I am satisfied that the information released was confidential.

5. The salient paragraph of Part V of the Code – *Confidential Information* – states:

*“No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law, or authorized by Council to do so.”*

6. Part VII of the Code – *Conduct Respecting Staff* – lays out the expectations regarding Members’ treatment of staff:

*Members are expected at all times to treat staff with respect, professionalism and courtesy ... Members and staff will work cooperatively based on shared values of honesty, trust, mutual respect, and leadership for continuous improvement.*

7. Part XI of the Code – *Discreditable Conduct* – includes the following statements:

*As a representative of the City, every Member has the duty and responsibility to treat members of the public, one another and staff, appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment.*

## ANALYSIS

8. The Complainant reports that members of the CLT were dismayed at the public revelation of the harassment claim. Their dismay is understandable and, in my view, justified. Harassment claims are highly sensitive, deeply personal and, however, resolved, can be a lasting blight on employment records and personal integrity. I find that Councillor DiMarco’s very public announcement of the claim constitutes a breach of Part V of the Code.

9. The fact that Councillor DiMarco did not reveal the substance of the discussions at the HRC meeting is of no assistance to him. The disclosure of the fact that an allegation of harassment had been made against a small group of people effectively casts suspicion upon every person in that group. Councillor DiMarco knew, or should have known, the reputational damage he would do to all the members of the CRT by letting slip the fact of the claim, damage that, as far as he knew, would be done in the complete absence of any proof of wrong behaviour, and against which the persons affected were utterly powerless to defend.

10. I find support for this finding in the report of Privacy Commissioner Loukidelis in Order 326-1999, where the Commissioner said that records that would permit the drawing of accurate inferences with respect to the substance of *in camera* deliberations, should not be disclosed. The release of the fact that a harassment suit had been made against one or more members of a small group permits the drawing of certain inferences.

11. Bearing in mind the likely impact the disclosure of the allegation has had on the members of the CLT, I also find that Councillor DiMarco has breached Parts VII and XI of the Code.

12. As a prelude to my recommendation, I refer to the Code's Preamble.

*The Code of Conduct for Council serves as a guide to Members of Council in the individual conduct of their official duties, helping to ensure that the Members share a common basis for acceptable conduct. It also serves to protect the public interest and encourage high ethical standards among the Members. The Code represents general standards; it supplements, but does not replace Members' roles, responsibilities, actions, and behaviors required by various statutes, by-laws and policies. The Code does not replace personal values or ethics held by individual members.*

*The Code of Conduct identifies the public's expectations of the Members and establishes guidelines for appropriate behavior. The key principles that underlie the Code of Conduct are as follows:*

- 1) *Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
- 2) *Members shall perform their functions with integrity, accountability, and transparency, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;*
- 3) *Members shall perform their duties of office in a manner that promotes public confidence and will bear close public scrutiny; and*
- 4) *Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Town Council.*

13. Of the several Codes that I have the responsibility of administering, I find this Preamble to the City's Code to be one of the best statements of the purposes of Codes of Conduct. I have considered Councillor DiMarco's conduct in light of these purposes, as I weigh my recommendations to Council.

14. This is the second report I am delivering today where I have found Councillor DiMarco to have breached the Code; the third overall during my term as the City's Integrity Commissioner. If Council is as concerned as I am about the pattern of inappropriate behaviour Councillor DiMarco has displayed over the past two years of this term of Council, and finds it to be disruptive to the business of governing the City and offensive to Members, City staff and the public, a strong message needs to be sent to Councillor DiMarco.

15. To that end, I am recommending that:

- 1) Council deliver a stern reprimand to Councillor DiMarco, making it clear that Council considers his disclosure of this confidential information to be a serious breach of his duty not to broadcast sensitive, personal information about a person or person(s), his duty to treat members of staff with respect and courtesy, and his obligation to ensure that the municipal work environment is free from harassment;

2) That Councillor DiMarco be removed as Chair of the HRC; and

3) That his remuneration as a Member of Council be suspended for 90 days.

All of which is respectfully submitted this 3<sup>rd</sup> day of November 2020.

A handwritten signature in black ink, appearing to read 'H.G. Elston', with a long horizontal line extending to the right.

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H.G. Elston  
Integrity Commissioner City of Welland